IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15859 of 2004
With
SPECIAL CIVIL APPLICATION No. 15862 of 2004
With
SPECIAL CIVIL APPLICATION No. 15863 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARENDRABHAI MAHIJIBHAI PATEL & 1 - Petitioner(s)
Versus
THE REGISTRAR CO.OP. SOC. & 3 - Respondent(s)

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Appearance :

SPECIAL CIVIL APPLICATION No 15859 of 2004
APPEARANCE WITHDRAWN for Petitioner(s) : 1 – 2.
MS DS PANDIT AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1 – 4.
MR TUSHAR MEHTA for Respondent(s) : 1,
MR NILESH A PANDYA for Respondent(s) : 3,

SPECIAL CIVIL APPLICATION No 15862 and 15863 of 2004
MR SN THAKKAR for Petitioner(s) : 1 – 2.
MS DS PANDIT AGP for Respondent(s) : 1,
RULE NOT RECEIVED BACK for Respondent(s) : 2.
MR NILESH A PANDYA for Respondent(s) : 3,
MR TUSHAR MEHTA for Respondent (s) : 4.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 16/03/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

These petitions are directed against the interlocutory orders of the Gujarat State Co-operative Tribunal in appeals filed by the present petitioners against the orders determining their liability under Section 93 of the Gujarat Cooperative Societies Act (hereinafter referred to as “the Act”).

2. The petitioners in the respective petitions were Directors of the Baroda District Central Co-operative Bank Ltd., in 1996-1997 and 1997-1998. The petitioners were elected as Directors of the said Bank by virtue of their holding the office as Chairman/Managing Director of the constituent Co-operative Societies or other Co-operative Societies. In exercise of powers under Section 93 of the Act, the District Registrar of Co-operative Societies, Baroda (“the District Registrar” for brevity) held an inquiry for recovery of different amounts aggregating to about Rs.3 Crores from the petitioners in their capacity as former Directors of the Baroda District Central Co-operative Bank Ltd., mainly on the ground that at the relevant time the investments made in the CRB Capital were to the tune of Rs. 3 Crores, but the

amounts were not recovered.

3. The defence of the petitioners was that out of total investment of Rs. 70 Crores, Rs.67 Crores had already been received back by the District Co-operative Bank and that for Rs.3 Crores owed by the CRB Capital, recovery proceedings including complaints under Section 138 of the Negotiable Instruments Act and Summary Suit No.4447 of 1997 were filed. The District Registrar, however, passed orders dated 28.6.2004 fastening the liability on the petitioners- former Directors for different amounts aggregating to Rs.3 crores approximately.

4. Aggrieved by the said orders, the petitioners went in appeal before the Gujarat State Co-operative Tribunal. The Tribunal admitted the appeals and on the interim applications for stay, the Tribunal passed common order dated 22.11.2004 granting interim stay against recovery of the amounts stipulated in the orders under Section 93 of the Act, subject to the condition that the concerned petitioners deposit the amounts ranging from Rs.3 lakhs to Rs.4,25,000/-. In one case (Appeal No. 589/04), the Tribunal granted unconditional stay against recovery and also against any disqualification on account of the liability arising under Section 93 of the Act. In other cases, the Tribunal made it clear that there was no interim stay against any disqualification proceedings arising from the liability under Section 93 of the Act.

5. Aggrieved by the aforesaid conditions imposed by the Tribunal and refusal of stay against disqualification proceedings, the petitioners filed the present petitions which came to be admitted on 21.12.2004 and the learned Single Judge granted interim stay in the following terms :-

> “The order passed by the respondent authority and confirmed by the Tribunal is stayed only qua the proceedings under Section 93 of the Gujarat Co-operative Societies Act, 1961.”

6. The District Registrar also initiated proceedings for removal of the petitioners under Section 76B of the Act. The petitioners had already ceased to be the Directors of Baroda Central District Co-operative Society but they were office bearers of some of the constituent Co-operative Societies and other societies. The District Registrar, after giving show-cause notice dated 28.7.2004 and after hearing the petitioners passed order dated 10.9.2004 removing the petitioners as office bearers of the concerned constituent Co-operative Societies or other societies under Section 76B(1) and also passed an order under Section 76B(2)disqualifying the said persons from contesting for any office in any Co-operative Society in the District for a period of four years from the date of the order.

7. Aggrieved by the said order, the former

Directors filed revision applications before the State Government. The revision applications have been allowed by orders dated 3.2.2005 on the ground that the order under Section 76B was passed only on the basis of the order under Section 93 of the Act, which has been stayed by this Court on 21.12.2004, and, therefore, the order dated 10.9.2004 of the District Registrar is required to be kept in abeyance awaiting the outcome of the decision of this Court in the pending petitions and the matter is remanded to the District Registrar for reconsideration after this Court finally decides the pending petitions.

8. The learned counsel for the petitioners have submitted that by virtue of the revisional order dated 03.02.2005, their respective clients are not going to come back as Directors of the Baroda District Central Co-operative Bank, but they will only be resuming as office bearers of the constituent co-operative societies or other co-operative societies. It is further submitted that the order under sub-section (2) of Section 76B of the Act, if permitted to operate, would disqualify their clients from contesting elections to any other Co-operative Society in the District of Baroda and that such grave consequences under sub-section (1) or sub-section (2) of Section 76B could not have been fastened upon their clients on the basis of the order under Section 93 of the Act which proceeding is already stayed by the learned Single Judge since 21.12.2004. It is also submitted that the show-cause notice dated 28.7.2004

was only for exercising powers under sub-section (1) of Section 76B of the Act and not for disqualification under sub-section (2) thereof. It is, therefore, submitted that the State Government has rightly passed the order dated 3.2.2005 keeping the order dated 10.9.2004 of the Registrar in abeyance during pendency of the appeals before the Tribunal.

9. It is further submitted by the learned counsel for the petitioners that when they were in office, they had already initiated recovery proceedings including filing of complaints under Section 138 of the Negotiable Instruments Act and also the summary suit, but it is the administrator appointed by the State Government, who entered into MOU with the defaulting party being C.R. Bhansali, proprietor of CRB Capital Ltd. on 26.9.2002, foregoing interest on the entire amount of Rs.3 Crores which was agreed to be repaid by the defaulter in ten annual installments and it is the administrator appointed by the State Government who agreed to stay all recovery proceedings, including the criminal proceedings pending in the Court of the learned Chief Metropolitan Magistrate, Ahmedabad under Section 138 of the Negotiable Instruments Act.

It is also pointed out that the aforesaid MOU was entered into by the administrator after obtaining approval of the Joint Registrar (Advance) of the Co-operative Societies, Gujarat State on

23.9.2002. It is, therefore, submitted that the State Government which itself has stayed recovery proceedings, cannot be permitted to accuse the former Directors of any default or any mala fide intention which is necessary for invoking powers under Section 93 of the Act as well as under Section 76B of the Act.

10. Having heard the learned counsel for the petitioners, we find that in view of the stay of recovery proceedings granted by the Administrator, the petitioners could not have been required to make the payment of the amounts determined under Section 93 of the Act and, therefore, the learned Single Judge was justified in granting the interim relief on 21.12.2004. But now upon our having granted interim stay of the MoU dated 26.9.2002 between the Administrator and CR Bhansali of CRB Capitals Ltd., the recovery proceedings can now be proceeded with and there will be no impediment to any recovery being made from CR Bhansali and others who are liable to repay the amounts to Baroda District Central Cooperative Bank Ltd. But considering the fact that the liability determined by the Registrar under Section 93 of the Act is to the tune of Rs.3 Crores approximately and that the condition imposed by the Tribunal for granting stay in favour of the petitioners comes to hardly about 10 to 15% of their liability determined under Section 93, the interim orders passed by the Tribunal do not require any interference in so far as the Tribunal has imposed

the condition of depositing certain amounts by the petitioners herein.

11. In the facts and circumstances of the case, however, it also appears to the Court that the interests of justice would be served if the petitioners are granted some time to pay the amounts as stipulated in the conditional stay order passed by the Tribunal. At the same time, since the order of the District Registrar imposing disqualification under Section 76B was passed on the basis of orders under Section 93 of the Act and the Tribunal has granted conditional interim stay, we are of the view that the petitioners have made out a case for staying the direction for disqualification, subject to compliance with the conditions stipulated by the Tribunal in the interim stay orders and subject to compliance with the final orders, if any, which may be passed at the final hearing of the appeals by the Tribunal.

12. These petitions are accordingly partly allowed in so far as the Tribunal did not grant any interim stay against any disqualification proceedings arising from the liability under Section 93 of the Act. During pendency of the appeals before the Tribunal, there shall be stay against disqualification arising from the liability under Section 93 of the Act, provided the respective petitioners deposit, without prejudice to their rights and contentions, the amounts as stipulated in

the interim stay orders passed by the Tribunal. As far as the amounts stipulated by the Tribunal in the said conditional stay orders are concerned, we do not interfere with the said conditions but grant the petitioners time to deposit the amounts as stipulated in the interim stay orders of the Tribunal in six equal monthly installments commencing from 10th April 2006. The Tribunal shall endeavour to complete the hearing and decide the appeals by 31st December 2006.

Rule is accordingly made absolute only to the aforesaid extent with no order as to costs.

(M.S. SHAH, J.)

(SHARAD D DAVE, J.)

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